IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4431 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

L H SHARMA

Versus

COUNCIL OF HOMOEOPATHIC SYSTEMOF MEDICINE

Appearance:

1. Special Civil Application No. 4431 of 1988

MR NIKHIL JOSHI for MR PRADEEP PATEL for Petitioner No. 1

MR PS CHAMPANERI for Petitioner No. 1

M/S NJ MEHTA ASSO. for Respondent No. 1-2

MR KIRIT I PATEL for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 09/09/2002

ORAL JUDGEMENT

1. In this petition, grievance has been made that without following the due procedure, the petitioner has been dismissed from the service by the respondents.

Hence, he has prayed that the respondents be directed to reinstate the petitioner on his original post with full backwages.

2. Certain relevant facts giving rise to this petition can be be stated as under :-

2.1. The petitioner at the relevant time was in the employment of the respondents. Initially he was working as Assistant Registrar and subsequently, he was put in charge of the Registrar of respondent no.1. While he was in charge of the post of Registrar, on account of some acts of misconduct alleged to have been committed by the petitioner during the service, he was ordered to be placed under suspension. The petitioner challenged the said order of suspension by filing Special Civil Application no.2962/1989. The said petition was admitted by this Court. However, by way of interim relief it was directed that the order of suspension should not be implemented on the conditions that the petitioner should not hold the charge of the post of Registrar. Further that he should act only as an Assistant Registrar and lastly that he should not take any notes of minutes or issue notice of meeting or cancellation thereof. So far the respondents are concerned, they were given liberty to pass fresh Resolution to suspend the petitioner if they so desired. Later on the petitioner was discontinued by respondent no.2 vide his order dated 19th April, 1985 from functioning as Registrar and in his place one Mr.N.K. Upadhyay was appointed as Registrar on ad-hoc basis. By the said order, the petitioner was specifically directed to hand over the charge of the post of Registrar to Mr.Upadhyay. Again the respondents passed order while exercising the powers under Section 16 (4) of the Gujarat Homeopathic Act ("the Act" for short) and suspended the petitioner with immediate effect pending the departmental inquiry. In view of this development, the petitioner took steps to move the petition which was already pending before this Court for final disposal and in the said petition, this Court directed that the petitioner be allowed to work as incharge Registrar till officer as Registrar could be made available to the respondents by the State Government. However, the petitioner was not permitted to call any meeting. These directions were issued by this Court as interim arrangement. Subsequently, respondent no.1 in its meeting dated 8th June, 1985 passed Resolution appointing one Mr.Vijay H. Desai as Inquiry Officer to inquire into the charges levelled against the petitioner as well as one Mr.Kothari who was also placed under suspension by respondent no.1. It appears that no

further steps were taken by respondent no.1 thereafter and the petitioner remained under suspension without any chargesheet or statement of allegations served upon him. In view thereof, the petitioner made representation to several authorities including the Secretary and Ministry for Health and Family Planning Department. It appears from the record of the petition that on 16th September, 1987 respondent no.2 issued chargesheet which according to the petitioner was received by him on 13th October, 1987. On 19th October, 1987 the petitioner made representation to the respondents stating that alongwith the chargesheet copies of the necessary documents were not supplied to him and without the same he was not in a position to prepare his statement of defence. He also, vide the said representation, requested the respondents that atleast he be permitted to have inspection of the relevant record so as to enable him to give appropriate replies to the allegations levelled against him. In the said representation he also expressed his inability to submit his reply within a period of seven days i.e. the time limit prescribed in the forwarding letter of respondents for submitting the written statement and sought extension of time. He requested for grant of minimum one month's time to reply to the chargesheet. It also appears that his request was not acceded to and, therefore, he was required to write second letter repeating the same request. On 10th December, 1987 the petitioner received a communication by Registrar of respondent no.1 alongwith the copies of the documents which were requested for by him. Since the petitioner thought that it would take about more than a month to prepare his reply, he submitted an application dated 28th December, 1987 requesting extension of time till 24th January, 1988 to submit his reply. In the meeting that was held on 10th January, 1988 the aforesaid letter of the petitioner was considered and his request was turned down on the ground that sufficient time had been granted to him and the petitioner was unnecessarily trying to prolong filing his reply. On 11th January, 1988 the petitioner was informed about the Resolution that was passed in the meeting held on 10th January, 1988 and he was also informed that in view of the powers conferred upon the respondents under Section 16 (6) of the Act and under Section 37 (1) of the Staff Regulations, his service was terminated. It is this order which is sought to be challenged in this petition.

3. Mr.Nikhil Joshi learned counsel appearing for Mr.P.J. Patel for the petitioner has submitted that the impugned order is required to be quashed and set aside as the respondents have not held any inquiry against the

petitioner and no chance has been given to him to refute the allegations which have been contained in the statement of allegations made against him. He has further contended that though the decision to initiate inquiry against him was take sometime in the year 1984 and appointment of the Inquiry Officer was made on 8th June, 1985 the respondents had not served him with the chargesheet and the statement of allegations till 16th September, 1987. It was only on that day the respondents had despatched the chargesheet which was received by the petitioner on 13th October, 1987. His grievance is that when the respondents took such a long time to prepare the chargesheet and statement of allegations against him, the petitioner ought to have been granted reasonable time to prepare his reply to the said charges to defend his interest. Such opportunity has not been given to him. He has therefore submitted that there is flagrant violation of the principles of natural justice and on that sole ground this order is required to be quashed. He has further submitted that the petitioner was at the relevant time working as incharge Registrar of respondent no.1 and, therefore, he should not have been placed under suspension unless previous sanction of the appropriate authority was obtained. According to him, in the present case no such consent was obtained and, therefore, the order of suspension and thereafter decision of terminating the petitioner's service were in violation of the provisions of Subsection (4) of Section 16 of the Act. Mr.Joshi has further submitted that in the meeting that was convened on 10th January, 1988 letter of the petitioner dated 24th December, 1987 requesting for extension of time could not have been considered because the said meeting was extension of the meeting that was earlier held on 31st December, 1987 and as the business of that meeting had remained incomplete, to transact the remaining business another meeting was decided to be convened on 10th January, 1988 of date 31st December, 1987. Since the letter of the petitioner did not form the part of the agenda for meeting held on 31st December, 1987 it could not have been considered in the subsequent meeting. He has further submitted that for bringing the item on the agenda such item is required to be notified atleast ten days prior to the date of the scheduled meeting. In the instant case, the letter was notified only on 4th January, 1988 for getting it considered in the meeting to be held on 10th January, 1988 which was, therefore, not in accordance with the time limit prescribed under Rule 32 of the Gujarat Homeopathic Rules. According to Mr.Joshi for this reason also the said letter could not have been considered in the meeting dated 10th January, 1988. His further grievance is that

so far taking the decision regarding the termination of the petitioner was concerned, the meeting could not have done so. It was not on the agenda meant for the said meeting. He has further attacked the impugned order on the ground that before passing the order of termination of service of the petitioner, the petitioner was not afforded any opportunity to explain why such order should not be passed against him. According to Mr.Joshi thereby the respondents have completely overlooked the provisions of Regulation 6 (1) of the Staff Regulations which provides that the Council or the President may terminate the service of any employee after due inquiry, giving such employee fair opportunity to explain as to why his service should not be terminated. Thus according to Mr.Joshi the petitioner has been done grave injustice by the respondents which is required to be remedied by this Court by directing the respondents to reinstate him on his original post with full backwages and all incidental benefits. Mr.Joshi's contention with regard to the meeting that was held on 10th January, 1988 is that it did not have requisite quorum and all the business that have been transacted in such meeting have no legal effect as such meeting was not a valid meeting in the eyes of law.

4. As against that Mr.K.I. Patel, learned counsel for the respondents has submitted that considering the serious charges which were levelled against the petitioner, it was rightly decided by the respondents to terminate the service. He has also drawn my attention to the allegations that have been levelled against the petitioner and has submitted that considering the seriousness of the irregularities and illegalities that have been committed by the petitioner, his integrity had become doubtful and, therefore, the respondents were fully justified in removing him from the service. He has further submitted that the decision taken by the respondents was in consonance with the provisions of the Act as well as the Regulations and no procedural illegality or irregularity has been committed by respondent no.1 either in initiating the departmental inquiry against the petitioner or while passing the impugned order and, therefore, the order was absolutely just and legal and no interference was called for by this Court. Mr.Patel has also submitted that the petitioner was granted adequate opportunity to submit his reply but he did not avail that opportunity and instead made attempts to unnecessarily prolong the inquiry. Moreover, the petitioner was clearly intimated that if he failed to file his reply within the prescribed time, the respondents would proceed on the footing that he did not

have anything to say with regard to the allegations made against him. According to Mr.Patel, when the petitioner despite adequate opportunity having been granted to him, did not submit his reply, the respondents were fully justified in holding the allegations as proved and established against the petitioner and pass the impugned order. So far as noncompliance of the provision of Section 16 (4) of the Act is concerned, Mr.Patel's submission is twofold. Firstly that the petitioner at the relevant time was not working as Registrar and, therefore, the said provisions would not apply to him. Moreover, assuming that it would apply, the adequate sanction had already been accorded by the Government and therefore there was no violation of that provisions. With regard to Mr.Joshi's submission about the meeting being held without the requisite quorum, Mr.Patel has submitted that the concerned provision provides that in case of non-quorum the President could adjourn the meeting on the same day or to any subsequent day and in the adjourned meeting irrespective of the quorum the business could be transacted. He has also drawn my attention to the minutes of the meeting of 10th January, 1988 wherein it has been stated that on account of non-quorum the meeting was adjourned and it was again held on the same day after more than half an hour period which was permissible in law. According to him there is no violation of principles of natural justice and the impugned order is required to be upheld. Lastly, he has submitted that in case the Court comes to the conclusion that the inquiry is defective the respondents can hold fresh inquiry from the stage at which the defect had crept in, but no relief of reinstatement can be granted in this case.

5. Having gone through the entire record of the petition as well as relevant legal provisions, it appears that the petitioner while discharging the duty of incharge Registrar was placed under suspension on account of detection of certain acts of misconduct alleged to have been committed by him. However, the said order of suspension came to be challenged by him before this Court in Special Civil Application no.2962/1984. In the said petition, this Court admitted the petition but granted interim relief subject to certain conditions. By virtue of that interim relief the order of suspension was stayed but the petitioner was directed to function as Assistant Registrar and he was prevented from making/recording the minutes or issue notice of the meeting. By the said order this Court had also granted liberty to the other side to pass fresh Resolution regarding suspension of the petitioner. In view of this order, respondent no.2 vide

order dated 19th April, 1985 directed the petitioner not to function as Registrar and the charge of Registrar was handed over to one Shri N.K. Upadhyay. Subsequently vide order dated 12th June, 1985 the respondents while exercising the powers under Section 16 (6) of the Act placed the petitioner under suspension. Thus it is very clear that by virtue of this Court's order as well as the order of respondent no.2 dated 19th April, 1985 the petitioner was no more working as incharge Registrar on 12th June, 1985. In view thereof, the respondents were not required to obtain any prior sanction of the Government as stated in Section 16 (4) of the Act and, therefore, Mr.Joshi's submission that in passing the order of suspension dated 12th June, 1985 respondents have committed breach of the provisions of Section 16 (4) of the Act cannot be accepted. If the aforesaid order of suspension is perused it states that it has been based on Section 16 (6) of the Act. However, the said subsection only empowers the Council to frame the Regulations on the subjects mentioned therein with the previous approval of the Government. This Section appears to have been wrongly mentioned in the order. However, such defect will not vitiate such order because relevant Regulations have been framed by the Councils for placing the delinquent under suspension, and in particular Section 16 (3) empowers the respondents to place the petitioner under suspension pending inquiry in serious charges. In light of this, the second part of the submissions made by Mr.Patel that sanction already granted is not required to be gone into. So far Mr.Joshi's submission with regard to the validity of the meeting held on 10th January, 1988 is concerned, the same also cannot be accepted because Section 10 of the Act deals with the meeting of the Councils. Subsection (5) thereof states as under :-

"Section 10 (5) :-

Six members including the President shall form a quorum. When a quorum is required but not present, the presiding authority shall, after waiting for not more than twenty minutes for such quorum, adjourn the meeting to such hour on the same or the following or some other day as it may notify and the business which would have been brought before the original meeting had there been a quorum thereat, shall be brought before the adjourned meeting and may be disposed of at such meeting or at any subsequent adjournment thereof, whether there be quorum present or not."

5.1. This provision clearly states that in absence of

the adequate number of members present in the meeting, the meeting may be adjourned to any hour on the same day or the following or some other day after waiting for twenty minutes for the quorum. The meeting was adjourned and convened on that very day after a period of half an hour. Subsection (5) also clearly states that in the adjourned meeting the business could be transacted even if the prescribed quorum was not there. This meeting therefore, cannot be termed as against the provisions of Subsection (5) of Section 10 of the Act.

6. The important question now remains to be decided is whether the petitioner has been granted adequate opportunity of hearing to defend his interest. As stated above, respondents had issued chargesheet on 16th September, 1987 which was received by the petitioner on 13th October, 1987. The petitioner found that it was not accompanied by the relevant documents and without the same he was not in a position to give proper reply to the charges levelled against him. He requested the respondents to either supply to him the copies of such documents or to permit him to have inspection of the record on which the respondents intended to rely on at the time of the inquiry. It also appears from the record of the petition that after much effort of the petitioner he was supplied with the copies of the documents alongwith respondents letter dated 10th December, 1987. Naturally the petitioner would require time to prepare his defence considering the number of charges levelled against him. He, therefore, vide his letter dated 24th December, 1987 requested the respondents to grant him time of one month i.e. upto 24th January, 1988 to submit his reply. On 12th January, 1988 he again wrote a letter intimating the respondents that he was suffering from typhoid and also forwarded medical certificate to that effect alongwith his letter. The respondents however, dispute this letter and state that no such letter was ever received by them. Be as it may, the fact remains that the petitioner had not sought unreasonably long time to give his reply more so when the respondents had taken about three years time to keep him under suspension without serving him with the chargesheet and statement of allegations and that too initially without copies of the relevant documents. It may also be noted that the petitioner had to make hard efforts to obtain such copies which were made available to him only after 10th December, 1987. In that view of the matter, the petitioner was amply justified in seeking time upto 24th January, 1988 to submit his reply. However, the respondents decided to act otherwise. It may also be noted that the respondents had shown undue haste in

taking decision against the petitioner on his letter because as stated above, for considering the item, agenda contained therein, had to be notified ten days prior to the holding of the meeting. Letter dated 24th December, 1987 of the petitioner was included in the agenda which was notified only on 4th January, 1988 whereas meeting was held on 10th January, 1988. The respondents could not have transacted any business on this letter in that meeting for want of compliance of the relevant provisions i.e. Rule 32 which deals with agenda. It reads as under:-

RULE 32 :-

AGENDA : In the case of ordinary meeting, - The Registrar shall under the instruction of the President, prepare the agenda and shall furnish a copy thereof to each member of the Council not less than ten days before the day for the meeting and furnish in case of a meeting where the question or removing the name of a registered or enlisted practitioner from the register or list, as the case may be, for any misconduct is to be considered shall also furnish to all members of the Council copies of the papers of the inquiry held against such practitioner."

6.1. This provision seems to have been completely violated as the letter dated 24th December, 1987 was placed on the notice board on 4th January, 1988 as agenda of the meeting to be held on 10th January, 1988. If this letter was to be considered in that meeting it was incumbent upon the respondents to notify the same atleast ten days prior to the holding of the said meeting. It also appears that the meeting dated 10th January, 1988 was only an extension of the earlier meeting which was convened on 31st December, 1987 because in the previous meeting certain business had remained untransacted and that was to be completed in the said meeting of 10th January, 1988. In the meeting of 31st December, 1987 the aforesaid letter of the petitioner was not on the the agenda. Thus undue haste of the respondents can be seen without any difficulty from the manner in which they have acted. I am therefore, inclined to accept the submission of Mr.Joshi that no adequate opportunity of submitting the reply has been granted to the petitioner and the same has therefore resulted into miscarriage of justice.

7. The second important aspect is that in the

meeting of 10th January, 1988 Resolution with regard to not to grant time to the petition was passed. It was also resolved by the meeting that the petitioner had nothing to say against the charged levelled against him and, therefore, the acts of misconduct alleged against him were adequately proved and he was required to be dismissed from service. On the very next day i.e. 11th January, 1988 the petitioner was intimated about his dismissal from service. One fails to understand that when this subject was not forming part of the agenda how could respondents take such decision and pass Resolution to that effect. It is in complete violation not only of the norms in accordance with which such meetings are required to be held and business to be transacted but also in violation of Rule 32 as stated above. Such order cannot be allowed to exist even for a moment.

7.1. So far holding of the inquiry (and also of opportunity of hearing to be granted to the petitioner before passing impugned order) is concerned, I have no hesitation in holding that the respondents have not held any inquiry against the petitioner. Further when the Inquiry Officer was appointed by the respondents on 18th June, 1985 and subsequently the chargesheet as well as statement of allegations were made available to the petitioner, even in absence of any reply from the petitioner it was incumbent upon the respondents to hold inquiry and give chance to the petitioner to defend his interest in the said inquiry. Merely because there was no reply from the petitioner, the respondents could not have held that all the charges levelled against the petitioner were established. In fact, that was not their function. When the Inquiry Officer was appointed by them to inquire into the allegations levelled against the petitioner it was his function to give his findings and only upon the report of such Inquiry Officer the respondents were required to take a suitable decision. It is an admitted fact that the Inquiry Officer never came into the picture. He never held any inquiry against the petitioner nor did he prepare any report of such inquiry and in such circumstances, the respondents took decision terminating the service of the petitioner holding that the charges levelled against him were adequately proved. One cannot come across a grosser case of violation of principles of natural justice than this. Not only that but even as per the Regulation 6 (1) which has been reproduced by the respondents in their affidavit it is prescribed that the Council or the President may terminate the service of any employee after giving such employee a fair opportunity to explain why his service should not be terminated. Obviously, this provision also

has not been followed. Thus neither any inquiry has been held in this case nor any opportunity has been afforded to the petitioner to explain as to why his service should not be terminated before passing the impugned order. I have found no merit in the averments of the respondents that since the petitioner had not submitted his reply to the chargesheet, the Council had rightly taken the decision to terminate the service of the petitioner without holding the inquiry. As stated above there is nothing on record to show that the petitioner had initially sought extension of time to submit his reply with a view to prolong the inquiry unnecessarily. On the contrary it clearly appears that the request of the petitioner was absolutely genuine, just and it was required to be granted so as to enable him to defend his interest, but the same has been denied to him by the respondents by showing undue haste in passing the order of termination of service. On this count also the impugned order is required to be quashed and set aside.

8. Normally while exercising the powers of judicial review while sitting under Article 226 of the Constitution of India this Court will not interfere with the administrative decision of the authority. However, when it appears from the record that there is flagrant violation of principles of natural justice this Court can certainly interfere and pass appropriate order to remedy the injustice caused to the petitioner on account of such action of the respondents.

9. This brings me to the submission of Mr.Patel that in the event the impugned order is quashed and set aside this Court may not pass the order of reinstatement but instead direct the respondents to hold further inquiry from the stage of the defect in procedure. He has also placed reliance in support of this submission in the case of State of Punjab & Ors. v. Dr.Harbhajan Singh Greasy reported in J.T. 1996 (5) S.C. at page 403. In this decision the Apex Court has held that when the inquiry has been found to be faulty it could not be proper to direct the reinstatement with consequential benefits. In such cases the proper course to be adopted is to remit to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take the action according to law. The second decision relied on by Mr.Patel is rendered by the learned single Judge of this Court in the case of M.K. Chandarana Kanya Vidyalaya Samiti v. Bachubhai H. Paria dated 11th August, 1997 in Special Civil Application no.8885/1991. In this judgment reliance has been placed on the aforesaid judgment of the Apex Court and the matter has

been remanded back to the disciplinary authority to proceed from the stage at which the fault was found. There cannot be any dispute with regard to the ratio laid down by the Apex Court and this Court. However, considering the facts of this case the ratio laid down in the aforesaid case cannot be applied here. In both the aforesaid cases, inquiry was held and the inquiry report was prepared and thereafter at later stage before the higher forum defect was pointed out and in those circumstances the concerned authorities were directed to proceed with the further inquiry afresh from the stage of defect. In this case admittedly, no inquiry at all has been held. There is no question of there being any defect in the procedure of the inquiry. Not only that but the petitioner was placed under suspension way back in the year 1984 for the alleged acts of misconduct which were contained in the statement of allegations. If, the allegations are perused, most of the allegations pertain to years 1983 and 1984. Moreover, annexure to the affidavit-in-reply at page 88 shows that there are as many as twelve allegations levelled against him. If, these allegations are minutely perused, they involved complicated facts. If the petitioner is now asked to defend those charges, it would be impossible for him to remember all the details with regard to each charge and he will not be in a position to adequately refute those charges. Had the respondents acted in time and in proper manner, the petitioner could have appropriately replied to each charge and could have properly defended his interest. At such belated stage i.e. after a lapse of about 19 years one cannot except the petitioner to remember each and every minute detail and he would not be in a position to say emphatically that on that he acted in a particular manner or omitted to act in a particular manner and why. In my opinion, therefore no fruitful purpose will be served by directing the respondents to hold denovo inquiry and to decide the charges levelled against the petitioner afresh. Considering the facts of this case, if respondents had to carry out this exercise they will have to do it from the first stage i.e. appointment of Inquiry Officer and to grant time to the petitioner to submit his reply and to proceed further. Thereafter with the hearing of the inquiry one does not know what time it will take to complete the entire procedure. In the circumstances, it is not at all desirable now to prolong the agony of the petitioner any more and it is better that his suffering for all these years should be brought to an end. I am fortified in taking this view by the decision of the Apex Court rendered in the case of Dipti Prakash Banerjee v. S.N. Bose National Centre for Basic Sciences, Calcutta

reported in A.I.R. 1999 S.C. 983. In the said decision the Apex Court has held as under :-

> "47. Learned senior counsel for the respondent submitted on the basis of State of Haryana v. Jagdish Chander (1995) 2 SCC 567 ; (1995 A.I.R. SCW 964) that merely because an order of termination was set aside on grounds of lack of opportunity, it was not necessary to direct reinstatement and backwages. Reliance in Jagdish Chander's case (1995 A.I.R. SCW 964) was placed upon Managing Director ECIL v. B Karunakar (1993) 4 SCC 727 : (1994 A.I.R. SCW 1050). It is true that such an order not granting reinstatement or backwages was passed in Jagdish Chander's case (1995 AIR SCW 964) following Karunkar's case. But it has to be noticed that in Karunakar's case, there was a regular departmental inquiry but the inquiry report was not given to the officer. This Court directed the report to be given and set aside the proceedings from that stage and stated that no order for reinstatement or backwages need be passed at that stage. But in cases like the present where no departmental inquiry whatsoever was held, Karunakar's case, in our view cannot be an authority. As to backwages, no facts, the position in the present case is that there is no material to say that the appellant has been gainfully employed. The appellant is, therefore, entitled to reinstatement and backwages till the date of reinstatement from the date of termination and to continuity of service. Point 4 is decided accordingly."

9.1. The facts of the present case clearly stand covered by the aforesaid ratio laid down by the Apex Court. In that view of the matter, Mr.Patel's contention that no relief of reinstatement can be granted in this case cannot be accepted.

10. Lastly, on the question of grant of backwages, Mr.Patel has drawn my attention to the pamphlet which is said to be circulated by the petitioner. The same is annexed at annexure-Z at page 83 of the affidavit-in-reply of the respondents. In the said pamphlet certain good aspect of Homeopathy treatment have been stated and at the end of it, it has been stated that Homeopath medicines would be available at :-

Shop no.24/2
Adjoining to Arora Plastics
& Engineering Works,
Sardarnagar,
Ahmedabad.

On the basis of this pamphlet it is sought to be contended by Mr.Patel that the petitioner was practicing in Homeopathy and that way he was gainfully employed during the period of suspension as well as dismissal from the service. No other evidence much less reliable evidence has been produced to show that the petitioner was practicing Homeopathy and was earning his livelihood. In fact this pamphlet does not give any such indication. Not only that but even the petitioner has fairly accepted that it was the pamphlet circulated by him. However, he has adequately explained this aspect in para 6 of his affidavit-rejoinder to the additional reply filed by the respondents wherein he has stated that to survive and earn his livelihood he was encourage by his brother to get engaged in some activity and he had helped him in getting pamphlet printed. However, due to stigma attached to him on account of his dismissal from the service he found very hard to have patient. Not only that but for setting up a dispensary he did not have any fund. His plan to develop the infrastructure for selling medicines etc., did not materialize for want of adequate practice for the aforesaid reasons. He had, therefore, dropped that idea. This attitude of the petitioner sounds very natural as anybody who is placed in such a situation will try to raise some income by lawful means to maintain himself and the family members. The petitioner has precisely tried to do the same thing and he has been very frank in admitting that. Unfortunately, he did not get the expected results from this venture and ultimately he dropped this idea. He has also stated on oath that he was not at all gainfully employed or engaged anywhere else. In view of these facts, it will be just and proper that he should be awarded full backwages with all incidental benefits.

11. In view of the aforesaid discussion, this petition deserves to be allowed and the impugned order of dismissal of the petitioner from service is required to be quashed and set aside and the same is hereby quashed and set aside. The respondents are directed to reinstate the petitioner on his original post with continuity of service together with the payment of full backwages and all other incidental benefits. Mr.Patel at this stage had requested that the order passed by this Court must be stayed for a period of 30 days since respondents have to

take appropriate decision and for that they will require some reasonable time. This order is stayed for a period of 30 days i.e. 9th October, 2002 since the request of Mr.Patel appears to be quite reasonable and it is accepted. Rule is made absolute with costs.

[AKSHAY H. METHA, J.]

/phalguni/